IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1176 of 1981
With
FIRST APPEAL No. 1056 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTILAL NATHALAL PRAJAPATI - Appellant(s)
Versus
AMRATBHAI VITHALBHAI & 2 - Defendant(s)

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Appearance : [F.A. No. : 1176 of 1981]
MR VIKRAM THAKORE for MR MC BHATT for Appellant(s) : 1,
(MR GN DESAI) for Defendant(s) : 1,
MR PRAKASH K JANI for Defendant(s) : 2,
MR PV NANAVATI for Defendant(s) : 3,

Appearance : [F.A. No. : 1056 of 1981]
MR PRAKASH K JANI for Appellant(s) : 1,
MR VIKRAM THAKORE for MR MC BHATT for Defendant(s) : 2,
Served by RPAD (N) : 2,
MR PV NANAVATI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 05/09/2006

ORAL COMMON JUDGMENT

1. Both these appeals are directed against the judgment and award made by the Motor Accident Claims Tribunal [Main] Mahesana in Motor Accident Claim Petition Nos. 158 of 1979 & 171 of 1979 dated 30th September, 1980. They are heard together and they are now being disposed of by this common judgment. First Appeal No. 1176 of 1981 has been preferred by the original claimant, whereas First Appeal No. 1056 of 1981 has been preferred by the insured, namely original respondent no. 2.

2. The appellant - original claimant sustained injuries in a vehicular accident, which occurred on 12th May, 1979 at about 7:00 a.m. On that day he was travelling in a Matador bearing registration number GJB 4698 which was driven by respondent no. 1. It was averred by the appellant that respondent no. 1 drove the vehicle rashly and in a negligent manner and as a result of the same, it went off the road and then turned turtle. It is his case that he boarded the vehicle while he was waiting at the bus-stand of village Piludara. Respondent no. 1 approached him and offered him a seat in the vehicle by charging Re.1/-. It was then the accident occurred. As a result of the accident, the appellant suffered severe injuries including the fracture. He was, therefore, admitted into the hospital for medical treatment and he

was twice operated upon. He had to remain in the hospital for a period of four months and ten days. He thereafter preferred petition under the provisions of Motor Vehicles Act for claiming compensation of Rs.99,999=00. In the petition it was averred by him that he was having watch repairing shop in the name of Raj Watch Works, in the partnership with one Prajapati Ramanbhai. He was getting about Rs.300 to Rs.350=00 per month for watch repairing. It is also his say that he did agricultural work and generated income of Rs.3,000=00 per annum. On the basis of this, he filed the aforesaid petition. The claim was resisted by the respondents by filing written statement. Respondent no. 1 was a driver, whereas respondent no. 2 owned the vehicle, which was insured with respondent no. 3. Respondent no. 3 - Insurance Company took the stand that it was not responsible to indemnify the injured because there was breach of the term of policy. The stand of respondents no. 1 and 2 was that the offending vehicle namely, Matador was driven in a moderate speed and there was no negligence on the part of respondent no. 1. It is their stand that in the process of overtaking the vehicle going ahead of Matador, because of the loose earth, the vehicle turned turtle and the injuries were caused.

3. The Tribunal on the basis of the material

produced before it in the form of oral as well as documentary evidence came to the conclusion that the appellant was entitled to receive compensation to the extent of Rs.38,500=00 against the claim of Rs.99,999=00. It also reached to the conclusion that so far as respondent no. 3 – Insurance Company is concerned, its liability was limited to the extent of Rs.3,750=00 and it was required to satisfy the award only to that extent with proportionate costs and interest.

4. The appellant - claimant being aggrieved by the said judgment and award has preferred appeal before this Court on two grounds, mainly that partial exoneration of the Insurance Company by the Tribunal is erroneous and that the Tribunal has erred in not awarding the full compensation as claimed by him. The appeal of the insured i.e. First Appeal No. 1056 of 1981 is filed to challenge partial exoneration of Insurance Company by the Tribunal.

5. I have heard Mr. Vikram Thakore learned advocate for the appellant and Mr. P.V. Nanavati learned advocate for the Insurance Company. I have also closely perused the record of these appeals. There is no dispute that the appellant sustained injuries in a accident which took place on 12th May, 1979. It is also not in dispute that at

the time of accident, he was travelling in a Matador bearing registration No. GJB 4698, which was insured with respondent no. 3. It is also not in dispute that respondent no. 1 was driving the vehicle and it was owned by respondent no. 2. The dispute is two-fold. Firstly, so far as the appellant-claimant is concerned, he has disputed the finding with regard to quantum of compensation and also the finding with regard to limited liability of the Insurance Company. So far as the appellant of First Appeal No. 1056 of 1981 i.e., the owner is concerned, he has disputed the finding with regard to limited liability of the Insurance Company.

6. In view of the aforesaid, first of all I will consider the question with regard to quantum of compensation awarded by the Tribunal whether it is just and proper. The say of the appellant is that he was doing watch repairing work in partnership. He and one Ramanbhai Prajapati did the business in the name of Raj Watch Works. It is his say that he earned Rs.300=00 to Rs.350=00 per month by watch repairing. Of course, he has also stated in his evidence that side by side he was doing agricultural work and was earning Rs.3,000=00 per month from the agriculture. That evidence has not been believed by the Tribunal and in my opinion, rightly so,

because the facts on record do not inspire confidence so as to accept this version of the appellant. So far as the income from watch repairing is concerned, the appellant earned Rs.300=00 to Rs.350=00 per month. His say is that on account of the injuries sustained by him on hand, he has suffered permanent disability which now prevents him from carrying on this work and he has, therefore, engaged a person to whom he pays Rs.250=00 per month. There is no reason to disbelieve this aspect of his evidence, because there is nothing on record to controvert this fact and the same has to be accepted. The evidence shows that the appellant had suffered permanent disability, and the Tribunal has assessed it at 61% to the left hand and the total disability is assessed at 30%. However, considering the nature of the injuries suffered by him and also the nature of work done by him, it is clear that the finding of the Tribunal on this aspect is erroneous. The disability has to be worked out keeping in view not only the injury, but also to which limb the injury is caused and importance of the said limb *vis-a-vis* the activity of earning carried on by the concerned person. The very fact that appellant had to engage a person for the watch repairing, shows that he was almost completely rendered disabled to carry on such work. So far as the loss of future income is concerned, it has to be assessed on the

basis of the disability. It is his say that he earned Rs.300=00 to Rs.350=00. Hence, if his monthly income is taken at Rs.300=00 per month, it can well be presumed that the said income is totally lost. In view of the same, and in view of the fact that the said income would not have remained static, it is safe to conclude that the future loss can be assessed at Rs.450=00 per month and the annual loss can be assessed at Rs.5,400=00. Considering the age of the appellant, multiplier of 15 can be just and proper and, therefore, the pecuniary loss under that head can be assessed at Rs.81,000=00. So far as the question of compensation under the head of pain and suffering is concerned, it is the evidence that the appellant had sustained fracture of the hand, for which he was hospitalized and the duration of the hospitalization was four months and ten days, during which he was twice operated upon. In the case of **Babu Mansa v. Ahmedabad Municipal Corporation & Ors., reported in G.L.R. [XIX] at page 492**, the Division Bench of this Court in such case has awarded Rs.15,000=00 as conventional global amount for pain and suffering and loss of amenities and enjoyment of life. The same ratio can be applied to the facts of this case and, therefore, there is no hesitation on my part to award a sum of Rs.15,000=00 to the appellant under the head of pain and

suffering. Obviously, the Tribunal has erred in not determining any compensation under this head, separately. So far as the loss of annual income, medicines, special diet etc,, are concerned, the compensation at Rs.4,000=00 can be the just amount. Thus the total amount of Rs.4,000=00 would work out to Rs. 1 lakh. The claim of the appellant is Rs.99,999=00. Hence, the same is required to be fully allowed.

7. So far as the other dispute is concerned i.e., with regard to limited liability of the Insurance Company, the policy of the offending vehicle is on record at Exh. 60. The policy shows that the insured has paid extra premium for wider coverage. It also shows that the liability was not limited. In view of this obvious position, the finding of the Tribunal limiting the liability of the Insurance Company is erroneous. In other words, considering the risk covered by the Insurance Company, it is fully liable to satisfy the award passed by this Court in favour of the appellant.

8. So far as the aspect of insurance is concerned, the evidence of the appellant clearly shows that at the relevant point of time, the vehicle was being driven at excessive speed and that was the precise reason why in

the process of over taking of another vehicle the offending vehicle over turned and injuring the appellant. No reliable evidence has been brought on record by the respondents to show that in spite of the due diligence on the part of respondent no. 1, the accident occurred. Therefore, there is no doubt in my mind that the accident happened only on account of his negligence.

9. In view of the aforesaid, the finding of the Tribunal with regard to quantum of compensation awardable to the appellant is modified and the compensation is enhanced from Rs.38,500=00 to Rs,99,999=00 with running interest at 6% per annum from the date of the petition till the date of realization. So far the finding regarding limited liabilities is concerned, it is quashed and set aside. Respondent no. 3 Insurance Company is held fully liable to satisfy the entire award against the insured - respondent no. 2. Hence, both the appeals i.e. First Appeal No. 1176 of 1981 and First Appeal No. 1056 of 1981 are allowed with no order as to costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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